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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 BARBARA STEWART,

4 Plaintiff,

New York, N.Y.

5 v.

19 Civ. 5960 (NRB)

6 MICHELE STEWART a/k/a Michele
7 Bouman-Stewart,

8 Defendant.

-----x

9
10 April 1, 2020
12:07 p.m.

11 Before:

12 HON. NAOMI REICE BUCHWALD,

13 District Judge

14 APPEARANCES (via teleconference)

15 MARCUS & CINELLI, LLP
Attorneys for Plaintiff

16 BY: DAVID P. MARCUS
EDWARD P. YANKELUNAS

17 MEYNER AND LANDIS LLP
Attorneys for Defendant

18 BY: DAVID GRANTZ
19 CATHERINE PASTRIKOS KELLY

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(Teleconference established)

THE COURT: Good morning. This is Judge Buchwald.

ALL COUNSEL: Good morning, Judge.

THE COURT: Good morning. All right. I just need to know -- I'm counting that there are seven people on the line. I only want to have identified the people who will be speaking for the plaintiff and for the defendant. And we have a court reporter, so it is absolutely essential that before you say anything, that you state your name. OK?

So, who is going to speak for the plaintiff?

MR. MARCUS: Judge, it's Dave Marcus for the plaintiff. I will be speaking.

THE COURT: OK. And for --

MR. GRANTZ: Good afternoon, your Honor. This is David Grantz from Meyner and Landis. I will be speaking for the defendant, but my partner, Catherine Kelly, is also on the line, and she will also be addressing issues relating to discovery. I don't think there will be any confusion between the two of us.

THE COURT: OK. Let me state, which I probably should have for the record, that this conference call is being held in the case of Stewart against Stewart, 19 Civ. 5960, and the purpose of the call is to address a series of letters going back to February 3rd and up into March. March 24 I think may be the last one.

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1 So let's -- so the letters concern probably speaking
2 two topics. One is the motion of -- or the proposed motion of
3 the plaintiff to the defendant's counterclaims and the second
4 general subject is discovery.

5 So let me say, on the topic of the motion to dismiss,
6 I think it is a total waste of time. I think that the bottom
7 line here is that the parties need to learn by e-discovery the
8 universe of documents which exist or don't exist, and only then
9 with that universe of documents, will we know what can or
10 cannot be proven. And I don't think that motions at this stage
11 will make any sense. I think in the end, the documents,
12 probably combined with depositions which will explore whether
13 the documents are consistent with the positions that people are
14 taking, or have taken over the years, will be the answer. I
15 don't think any motions at this time will be valuable.

16 Turning to the issues of discovery. I think perhaps
17 one of the easier ones concerns the subpoena to Tres. That's
18 T-r-e-s. I have no problem if the parties wish -- or any party
19 wishes to try to compel a response to that subpoena.

20 There seems also to be an issue related to what search
21 terms were used, I believe, if I recall, by the plaintiff. I
22 think that that's easy enough to deal with. I think, if my
23 memory is correct on that, that the defendant is asserting that
24 plaintiff didn't utilize enough search terms. The defendant
25 counsel can certainly tell the plaintiff's counsel what search

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1 terms the defendant used. And I don't really know why it would
2 be unduly burdensome for the plaintiff to run another search if
3 there are additional terms that make sense for the plaintiff to
4 utilize. I don't think this issue of search terms ought to be
5 a deal breaker.

6 There's also an issue related to attorney-client
7 privilege. So, two things on that. One, if there are
8 documents which are being held on the basis of attorney-client
9 privilege, I would like those documents to be submitted to me
10 with an explanation. I will look at them and determine whether
11 it is an appropriate assertion of privilege.

12 Obviously, if you don't want to put them up on ECF,
13 the mails are still working. Mail that is sent to the
14 courthouse will be forwarded to me at home, and I will be able
15 to look at it. But I think there is perhaps a bigger issue
16 which I would like to hear from you about. If I'm correct, the
17 privilege documents that are being withheld are between the
18 defendant and the attorney, a Mr. Iglehart. Am I correct?

19 MS. KELLY: Yes, your Honor.

20 THE COURT: Well, I think Mr. Iglehart has a real
21 conflict problem, and I don't know that anything that he is
22 trying to resolve he can. But if what I read is correct, at
23 one point Mr. Iglehart represented the plaintiff's husband and
24 the plaintiff. I do not know how an attorney can now take on a
25 representation of the defendant which is contrary in this case

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1 to the position of his former client, and I don't see,
2 therefore, why anything he is doing is privileged, because I'm
3 not sure he really could have even commenced an attorney-client
4 relationship with the defendant --

5 MS. KELLY: Your Honor --

6 THE COURT: -- certainly to be accepted to the
7 contrary to the plaintiff --

8 MS. KELLY: Your Honor, at the time that Iglehart
9 represented defendant -- and I apologize, your Honor. This is
10 Catherine Kelly, on behalf of the defendant. There are two
11 documents that are on our privilege log that are being
12 withheld. The first one is dated from 2010 and the second is
13 2009. At that time, I'm not sure whether a conflict would have
14 existed between the parties, but we can brief that issue for
15 your Honor, if the Court would like.

16 THE COURT: I just think it's, you know, kind of a
17 problem. You know, there is no question that the defendant and
18 the plaintiff have a conflict, and there also appears to be no
19 question that the attorney represented the plaintiff at one
20 point and is now representing the defendant.

21 MR. GRANTZ: This is David Grantz. I understand --
22 for the defendant. I understand the issue that you are raising
23 about conflicts, and I do think we need to dig in a little bit
24 further. You mentioned it in our first conference, when we
25 were there in person, that you had some concerns about

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1 Mr. Iglehart's representation.

2 My understanding is that he was representing
3 Mr. Stewart and Mrs. Stewart in the '90s and then going forward
4 sometime into the 2000s and maybe later. At some point in the
5 relationship, the attorney started to represent the defendant
6 in the context of the issues that were being done with respect
7 to this jewelry and the relationship between the defendant and
8 the entities that were formed to hold the jewelry, so at the
9 time there would not have been any conflict of interest between
10 the plaintiff and the defendant.

11 THE COURT: Why?

12 MR. GRANTZ: Who are adverse to each other --

13 THE COURT: The position --

14 (Teleconference computer beeping)

15 THE COURT: Hello. Have we lost anybody?

16 MR. GRANTZ: You didn't lose me. This is Mr. Grant.

17 THE COURT: Mr. Marcus, do I have you?

18 MR. MARCUS: Dave Marcus, still here.

19 THE COURT: OK. Ms. Kelly.

20 MS. KELLY: Yes, I'm still here. Thank you.

21 THE COURT: The court reporter, who at the moment is
22 nameless to me?

23 THE COURT REPORTER: I'm sorry, your Honor. This is
24 Vincent Bologna.

25 THE COURT: Hi, Vincent. How are you?

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1 THE COURT REPORTER: OK.

2 (Discussion off the record)

3 THE COURT: Let's go back.

4 Mr. Grantz, why don't you repeat what you said because
5 I probably interrupted you.

6 MR. GRANTZ: So, there was no interruption, Judge.
7 The issue that I'm raising is that at the time that we're
8 talking about in 2009 and 2010, the representation was not a
9 circumstance where the plaintiff and defendant were adverse to
10 each other. They were working, you know, in tandem
11 essentially. Ms. Stewart and her husband had delivered the
12 jewelry to Topaze, which was formed in the '90s and changed to
13 DGBF, and they designated her as the beneficial owner of the
14 company. And she was involved with Mr. Iglehart entering into
15 a fiduciary agreement so that he could serve the entity, and he
16 represented her in that capacity and other capacities as well.
17 But at the time there would not have been any conflict between
18 his dual representation of Ms. Stewart in the context of her
19 delivering jewelry to this entity and the beneficial owner.
20 Sorry.

21 THE COURT: I'm sorry. When you say "Ms. Stewart,"
22 why don't we say the plaintiff and the defendant, since they
23 both have the same name here.

24 MR. GRANTZ: Sure. I refer to my client as
25 Ms. Bouman.

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1 THE COURT: All right. Fair enough.

2 MR. GRANTZ: I apologize. I don't want to talk over
3 you.

4 THE COURT: Go ahead.

5 MR. GRANTZ: No, that's it. I respectfully disagree
6 that there would have been a conflict of interest for
7 Mr. Iglehart back in 2009 and 2010. And to the extent that
8 they are withholding documents based on privilege during that
9 time, I don't agree that he would have had a conflict then. To
10 the extent he was representing Michele Bouman in the context of
11 something against Mrs. Stewart now or within the last few
12 years, then, yes, but that's not what we're raising.

13 THE COURT: All right. But back in 2009, or leaving
14 aside the time, you're saying that there was no conflict, but
15 does that mean that your client at that time agrees with the
16 position of the plaintiff here that that jewelry was put into
17 the Topaze entity to avoid taxes on the plaintiff and was being
18 held by the entity essentially in trust for the plaintiff's
19 granddaughters?

20 MR. GRANTZ: I think that there is no disagreement
21 about that up until a certain point. I think that that's an
22 accurate statement up until I believe 2007, at which point
23 there was a change in the relationship, and Ms. Stewart and all
24 of the people involved in this determined that Michele should
25 be the beneficial owner of the jewelry and when Michele died

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1 she should have it passed along to the children. So, yeah, I
2 think that there are distinctions to be made, but I don't
3 disagree that the jewelry was placed into Topaze sometime in
4 the beginning of the '90s and continually thereafter for this
5 purpose, but I don't know if I want to use the word "trust"
6 since there was never a formal trust created and no writing
7 associating anyone to a trust.

8 THE COURT: And what document in 2007 says that the
9 plaintiffs in this case said instead of retaining my sort of
10 life interest in this jewelry, I would like to give all of this
11 jewelry to my ex-daughter-in-law?

12 MR. GRANTZ: So, Judge --

13 THE COURT: Or maybe then daughter-in-law. I don't
14 have all the marital details in my brain.

15 MR. GRANTZ: I don't have every document in front of
16 me that could answer that question and I don't think you do,
17 either, because we didn't submit all of that. But I can tell
18 you that I am looking at a couple of documents in front of me
19 right now, one of which is a 2009 document in which Ms. Stewart
20 wrote a letter to Mr. Iglehart, and it was faxed on November 9,
21 20 -- excuse me, November 6, 2009. And it says: "John, I,
22 Barbara Stewart, hereby direct you to consider Michele Bouman
23 beneficial owner of DGBF Holdings, Ltd. This letter is to
24 reiterate what I have said to you verbally in the past, that
25 is, that Michele Bouman be considered as sole beneficiary owner

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1 of all shares and assets of DGBF Holdings. Best regards,"
2 signed by Ms. Stewart.

3 And I have an email that precedes that by a few
4 months, and I believe it is sent on September 10, 2009. But to
5 be honest, Judge, sometimes these emails have the dates a
6 little flipped because some are being sent from Europe and some
7 are being sent from the U.S. So this one says Thursday, 9/10
8 2009, so I am assuming it is September 10, 2009 and not
9 October 9th. It says, "Michele, a request has been made by
10 Bill's counsel for all financial documents relating to Topaze,
11 Ltd. You are the beneficial owner of the company. I have no
12 ownership interest in the company. My counsel has explained
13 that to the Court in New York. Nevertheless, the Court has
14 directed the documents relating to Topaze be produced. Since I
15 am not the owner, I cannot direct anyone to turn over the
16 documents. Either you can provide them to me so that I may
17 comply with the Court's directives or you should instruct John
18 Iglehart to produce the documents that have been requested.
19 Either way, the documents need to be forwarded to me."

20 So this is in 2009. Then in 2007 there was a
21 fiduciary agreement that was prepared by Mr. Iglehart in which
22 he was declared the fiduciary for the entity and Ms. Bouman was
23 the beneficial owner, and she signed the fiduciary agreement
24 with Mr. Iglehart. So -- and you kind of put me on the spot as
25 to what document. There are a lot of documents. But I can

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1 tell you about those right off the top of my head.

2 THE COURT: And, you know, we would all agree that at
3 no time -- or would we all agree at no time was the plaintiff
4 ever a beneficial owner of the shares of Topaze or the
5 successor entity or --

6 MR. GRANTZ: There is no --

7 THE COURT: -- is that correct?

8 MR. GRANTZ: There's no evidence to suggest that, and
9 all of the testimony in the prior proceedings, in the trust
10 action and the divorce action, that we've seen have suggested
11 that she was never the beneficial owner and never intended to
12 be the beneficial owner and that the jewelry was intended to be
13 out of her name so that I presume she could avoid tax
14 liability.

15 MR. MARCUS: Judge, this is Dave Marcus here.

16 I mean, I would respectfully disagree. I mean, the
17 documents, if we get into the weeds, they are certainly
18 inconsistent. There are documents showing -- as early as 1996,
19 there is a document from Iglehart to Michele which says that
20 Bill Stewart is going to continue to determine what happens
21 with the jewelry with instruction from him. There was an
22 understanding that the jewelry be put in this company Topaze,
23 but there is -- there is no -- I mean, I'm not sure what
24 "beneficial owner" means, to begin with, and I think that term
25 can be a little bit flexible. But certainly I think Barbara

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1 Stewart understood that the jewelry was going to be put in a
2 company, Topaze. Whether she had an ownership interest in
3 Topaze or not, she understood and I think all the parties
4 understood that she continued to hold some of the jewelry and
5 that she would have use of it.

6 I don't think she understood the legalities of it.
7 This was all done by Iglehart and set up by Bill Stewart. I
8 think everybody agrees to that, that that case, that it was
9 done as sort of a tax shelter. But the fact that a letter --
10 the letter that Mr. Grantz is referring to in 2009 appears to
11 have been written by Mr. Iglehart as a witnessed by line and at
12 the same time he is writing a letter saying why don't you sign
13 this saying that Michele Stewart is the beneficial owner, and
14 he is supposedly representing Michele Stewart. And it appears
15 from other documents that they are having a relationship at the
16 time, and this is where the conflict I think that you -- that
17 you referenced earlier comes in.

18 There is no clarity to who was the beneficial owner.
19 We don't know who owned Topaze, and there is no documents which
20 indicate who the owner of that company was. But there are
21 documents suggesting that it continued to be controlled by
22 Barbara and Bill Stewart because they were taking directions
23 from Barbara and Bill Stewart. So to say that they had no
24 interest in it, I don't think we can -- we certainly haven't
25 come to that determination.

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1 And the burden is on the defendant here, who is
2 claiming that she has taken ownership of a company that there
3 is no corporate documents ever showing that any delivery of
4 jewelry was made to a company, that the company -- what Michele
5 Stewart's -- Bouman's interest in the company was, or how it
6 was ever transferred to her. There is no evidence of this.

7 And that's why, Judge, if I can take a step backwards,
8 I think it's so important to have this motion on the
9 counterclaim heard, not so much because that needs to be --
10 that issue needs to be decided now, but because the scope of
11 discovery will be so expansive. What they're seeking is -- as
12 opposed to seeking documents showing the company ownership, who
13 had an interest in the company, how the company got
14 transferred, those are the critical documents in this case --
15 they want all -- they want to go through -- they want us to
16 look at every email that Barbara Stewart ever sent to any
17 member of her family. And there are over 30/40 years and there
18 are thousands of them, tens of thousands maybe. And for us to
19 go through all of those for no purpose at all, to find where
20 maybe Barbara Stewart said to one of her sons, oh, you know,
21 I'm wearing this piece of jewelry for -- I have a function or
22 what have you, I don't see a purpose of it.

23 I think that the motion -- I'm sorry, did you want to
24 say something?

25 THE COURT: I don't think I follow why this motion

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1 will accomplish anything. I think that's what I said at the
2 outset.

3 MR. MARCUS: OK.

4 THE COURT: Is you really -- in the end, one of you is
5 going to be able to prove your side, and only one of you, or
6 maybe nobody, but you don't get -- let me phrase it another
7 way. If you were making a motion for summary judgment, this
8 would be an ideal textbook case where the other side would say,
9 Judge, we can't respond to this motion for summary judgment
10 without additional discovery. It seems to me this is
11 essentially the same position that we're in now.

12 MR. MARCUS: May I respond, Judge?

13 THE COURT: Sure.

14 MR. MARCUS: Yeah. I would respectfully disagree with
15 that because we have here there is -- based on the pleadings,
16 based on the pleadings alone and the counterclaim, the
17 counterclaim cannot stand. It must fall, and it falls under
18 its own weight. And they're saying here -- I mean, to show
19 that there was a gift, they're saying that there were two gifts
20 that were made. One is that all the jewelry -- all of
21 Barbara's jewelry was gifted to Topaze, number one. Secondly,
22 that the company, Topaze, or its successor DGBF, whatever, was
23 gifted to Michele Stewart. In order to show that, there must
24 be facts alleged -- they must show that there are corporate
25 records, there are corporate documents, there was a delivery of

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1 jewelry, there was an intent to make a gift, that was a gift.
2 It must be established that there was an intent to make a gift
3 at that time, present intention, and that you can't reserve any
4 of the gift to yourself, or you can't make it for a future
5 time. And what they're saying is, well, she wasn't really
6 putting it in, it was a tax shelter; she wasn't looking to make
7 a gift, she was looking to shelter it. And there is no
8 evidence -- there is no pleading that there was -- specific
9 factual pleading of any delivery of the jewelry. There was no
10 pleading that the company was -- or who it was owned by, who
11 Topaze was owned by. She might have put it in Topaze and she
12 owned Topaze. We don't even --

13 THE COURT: I'm sorry. Documents were submitted,
14 which I actually read very recently, under cover of letter of
15 February 26, which are records about Topaze, and at least for a
16 period of time, it shows who were the owners, who had the
17 stock, what the assets of Topaze were. I'm not --

18 MR. MARCUS: If I may --

19 THE COURT: -- on what that all means. But to say
20 that there is no record of sort of the history, to some extent,
21 of Topaze is not quite accurate, I think.

22 MR. MARCUS: Well, I think it is accurate. I think
23 what you're referring to are documents which indicate that John
24 Iglehart was the owner of --

25 THE COURT: I agree with you. 999 out of a thousand

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1 or 99 out of a hundred in somebody else's name, who I don't
2 know.

3 MR. MARCUS: So if John Iglehart files a document and
4 says I'm the owner of this company, I mean, there has to be --
5 there has to be a document from Barbara and/or Bill Stewart
6 saying we are transferring this property. John Iglehart never
7 said he was an owner of any of this. It was never -- he was a
8 person who was, just for purposes of appearances, I guess, he
9 was the -- he put himself in as a beneficial owner, as a
10 shareholder, but he's never claimed that he had any ownership
11 in this. There was no claim in this case by anyone. I mean,
12 this appears to have been some type of -- all I can -- and this
13 is -- you know, what I surmise from it, that was some type of
14 tax shelter which was done for purposes of keeping Bill Stewart
15 and mainly Barbara Stewart's name out of the documents to avoid
16 a, you know, exactly what they said, avoid wealth tax or avoid
17 some inheritance tax, what have you. And so it was put -- John
18 Iglehart was listed as a director. He put himself in as a
19 shareholder. There has to be some other agreement between
20 Iglehart and whether it is Bill Stewart or Barbara Stewart that
21 details what this company was all about. But it has nothing to
22 do with Michele Stewart, and Michele Stewart hasn't evenly pled
23 that it was John Iglehart that was the owner of the company.
24 And if that's the case, why is Iglehart continually writing
25 Barbara and Bill Stewart saying, you know, sign these, you

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1 know, saying that it was -- you know, show beneficial owner?
2 And then why aren't they responding at the time when Barbara
3 (unintelligible), she says, hey, I thought I put all this
4 jewelry in Topaze, can you just please confirm that for me so
5 that I could tell the marital court? And when the marital
6 court was not informed, because they said -- Michele said I
7 don't have any information. Iglehart, they didn't respond, or
8 they said they didn't have it. And then Barbara was found to
9 be not credible at the hearing. And she was attributed with --
10 all this jewelry was attributed to our side of the balance
11 sheet, and so she got -- she ends up with virtually nothing.

12 THE COURT: I get that. But the point is just
13 listening to you makes my point, my point being that there
14 isn't a clear record. The fact may be that there never will be
15 a clear record, I don't know. But I think we ought to get to
16 the point where each side has to say that's all I can produce
17 to support my side. And once we've reached that point, we'll
18 then see if either party can actually get over the 50 percent
19 part.

20 But I do think -- and I raised it and everything you
21 are saying raises more questions about Mr. Iglehart with me.
22 But I do want to point out to you that if you would look at
23 there are Irish documents that in April of 1994 Michele Bouman
24 becomes a director, but, guess what, she is not listed as a
25 director by 1997. I don't know what's going on, but, frankly,

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1 neither do you. And until I have a better sense of what is
2 going on, I am not about to sort of come down on the side of
3 either party when there is much left to be discovered. Maybe
4 it will never be discovered. I don't know. Because maybe some
5 of this stuff is in Switzerland and Mr. Iglehart has destroyed
6 documents. We don't know whether he has or not, and maybe we
7 need to have some lawyers from abroad give us an education in
8 this -- what Topaze really is and what it can be and how this
9 stuff works there. I don't know.

10 But I go back to what I said to you at the very outset
11 the first time I met you: You should settle this case. No one
12 is getting younger. And there are rational ways to work
13 through this. But, you know, that is up to you. I think
14 we've --

15 MR. MARCUS: Judge.

16 THE COURT: Yes.

17 MR. MARCUS: If I may? To the extent that --

18 THE COURT: Identify yourself. Sir, identify
19 yourself.

20 MR. MARCUS: I'm sorry. Dave Marcus for the
21 plaintiff.

22 To the extent -- I understand what you're saying. But
23 then, at the very least, I think discovery should be limited to
24 the issues that you are referencing. Because what's happening
25 here is the defendant is only interested in discovery that goes

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1 into the, you know, our conversations in which they seem to
2 only be interested in issues of jewelry with regard to what
3 Barbara talked to Tres about or what Barbara talked to her sons
4 or Bill, and we would have had to go through so many years of
5 her emails, go through every single -- I mean, you could only
6 imagine how many emails were sent to family members and every
7 email that uses the word rock or ring or whatever it was, they
8 had a whole list of emails. And it would be such a gargantuan
9 task for us to go through that and sort through it.

10 We've produced everything --

11 THE COURT: Excuse me. Let me interrupt you.

12 Can't that be done by a service where, you know, like
13 that you give search terms? It is not that you sit and read
14 them. It is that the stuff gets loaded into, you know, some
15 computer with search terms, and then, you know, the documents
16 which have those search terms pop up and then you read them?

17 MR. MARCUS: Right. But even though I'm saying --

18 THE COURT: Let me interrupt here. Why can't you
19 afford to do that?

20 MR. MARCUS: Because our resources are very limited in
21 this case. I mean, it's just -- if it were something that
22 would produce anything that had anything to do with Topaze, the
23 ownership of Topaze, the transfer of Topaze, we have produced
24 all of that. All of that has been produced. We produced
25 everything. I think they've produced everything, and they've

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1 said they produced everything in that regard. But to go off on
2 discovery on issues that would really reflect damages in the
3 event that they were successful on their counterclaim and say,
4 well, OK, you know, do you still have this piece or that piece,
5 or what did you do with jewelry when you were 40 years old or
6 30 years old, or to go back into all that is just -- it expands
7 the scope of discovery tenfold. And it's not limited to the
8 issues that are essential to determination of the liability of
9 this case, the liability of the parties. And so it puts a
10 tremendous burden on us to respond to discovery, which I don't
11 think is part of any of this discussion that we're having here.
12 I don't -- you know, I would respectfully disagree that I think
13 the motion -- I think the motion speaks for itself. I think
14 they can't plead it. They haven't pled it. They can't plead a
15 counterclaim, and that would narrow the scope of discovery
16 substantially.

17 But to the extent that your Honor believes that we
18 should do discovery that will flesh those issues out, then I
19 think discovery, at least in the initial stages, ought to be
20 limited so that we can make those findings. And then if
21 they're successful on their motion, or if we lose the motion,
22 and, you know, at some point in time, OK, then maybe you get
23 into other issues. But it would be certainly in plaintiff's
24 interest if discovery could be narrow at this point. But if
25 the Court is not going to rule on our motion to dismiss the

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1 counterclaim, let's at least narrow the discovery to the issues
2 that would flesh the answers to that out.

3 MS. KELLY: Your Honor, this is Catherine Kelly. May
4 I respond to that?

5 THE COURT: Sure. Of course.

6 MS. KELLY: Your Honor, this is a case of the
7 plaintiff just trying not to fulfill her obligations in federal
8 court. I mean, plaintiff filed this suit. We filed
9 counterclaims. We conducted an exhaustive search for
10 documents, hardcopy and electronic. We produced all of those
11 documents, including documents that we withdrew from
12 Mr. Iglehart's file. We also conducted a search of the Irish
13 documents that your Honor was referring to that have been
14 publicly available since the time they were filed. And since
15 that time, we have also produced documents that we found from
16 the British Virgin Islands, which we also produced to the
17 plaintiffs. They were also publicly available since the time
18 they were filed.

19 The plaintiffs have not -- they are just making
20 conclusory statements about their burden. This case has not
21 been bifurcated. All of our requests are relevant. They have
22 not argued otherwise. They have not conducted any preliminary
23 searches to determine that the number of hits is overly
24 burdensome. They haven't provided the Court with any estimates
25 of how long the review would take and to establish that it's

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1 just too long. They just don't want to do the work. They
2 don't want to spend the money.

3 So, your Honor, there is absolutely no basis to their
4 argument. We have provided them with our exhaustive list of
5 search terms, which they refused to do. Then we said, OK,
6 fine, we'll give you a slimmed down list of search terms to
7 conduct. They refused to do that. They refused to give us a
8 list of the search terms that they did use, and they refused to
9 give us a search -- a list of search terms that they propose to
10 use. They just don't want to do it.

11 It's not -- that is not what the rules obligate the
12 parties to do in federal court.

13 I'm sorry. Just to follow up. We have identified
14 areas in which plaintiff's production is deficient. For
15 example, your Honor, we sought all communications between
16 plaintiff and anybody else regarding her jewelry. She only
17 produced three pages of documents. I mean, as we have been
18 discussing, she established this company as a tax shelter 28
19 years ago. Topaze owned 80 pieces of jewelry that were for a
20 purchase price of \$80 million.

21 THE COURT: What document shows that? What document
22 shows that -- ever -- that jewelry worth \$80 million was
23 deposited, in a sense, into Topaze and became the property of
24 Topaze, at least for some period of time?

25 MR. GRANTZ: Your Honor, this is Dave Grantz speaking.

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1 Just briefly. I think Catherine misspoke slightly
2 about \$80 million. I think the number isn't 80 million. So
3 why don't we just clarify the record on that? I think the
4 jewelry that has been placed in there is closer to 8 to \$10
5 million, not 80 million. So that was the first comment.

6 Then the second is we don't have a lot of documents
7 from 28 years ago because this was 28 years ago, and, you know,
8 the difficulty in obtaining documentation that goes back that
9 far is just the nature of age. And when we inquired of
10 Mr. Iglehart, his comment to us is he has a ten-year retention
11 requirement in Switzerland. So we may or may not --

12 THE COURT: Let me interrupt right on that. That is
13 not an answer, that there is a mandatory ten-year retention
14 statute. Has he ever sworn in a piece of paper that he
15 destroyed documents, even though he had a continuing client
16 relationship that continued well after ten years involving
17 these exact same entities? I don't think lawyers go off and
18 destroy old documents when they have continuing client
19 relationships on a subject matter. So, I'm not so sure that I
20 buy his excuse for not providing documents. Maybe it is that
21 he is now aligned with the defendant and doesn't want to
22 produce the earlier documents. I don't know. But I am very
23 suspicious about this. You can tell that from --

24 MR. GRANTZ: I appreciate it. This is Dave Grantz
25 again. I appreciate the suspicion.

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1 So a couple of comment about that. So this
2 information that Ms. Stewart has been seeking for many, many
3 years to establish her position in the divorce case is
4 troublesome, because she never went to Switzerland at that time
5 and sought a subpoena of Mr. Iglehart and never did anything to
6 enforce her rights as the client of Mr. Iglehart to get -- to
7 gain these documents. It was only after the divorce case when
8 she took issue with Ms. Bouman and Mr. Iglehart. Never once
9 did she do anything from a legal standpoint to obtain the
10 documents. And that's even borne out more by the fact that we
11 just found publicly-available records, records that were
12 available since the '90s and the early 2000s, and we produced
13 them by purchasing them for a few dollars on the Internet.
14 Those records were there. They were there when she was in her
15 divorce case. Her attorney didn't seek them. They didn't
16 present them.

17 And Mr. Marcus' conclusions that her credibility on
18 this issue was implicated by Michele Bouman or Mr. Iglehart
19 refusing to provide documentation to her is just simply absurd.
20 I mean, her credibility is damaged by so many other problems,
21 and for that reason we're looking for the divorce record. And
22 the reason why we're looking for these other records is because
23 we believe that there are multiple admissions.

24 I mean, Mr. Marcus doesn't want to do these searches
25 and provide us with correspondence between Ms. Stewart, her

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1 family members, because he knows that she says things in emails
2 that are going to be problematic, and we want to see what those
3 things are. It is a reasonable request. Admissions against
4 interest are going to be particularly helpful in this case to
5 us.

6 I wanted to get back to one other comment you made
7 earlier, Judge. You said that it is going to be a problem,
8 potentially, for one or the other side or maybe both sides to
9 prove the case. And you're absolutely right. The case is rife
10 with evidential problems, because the records are old, the
11 information is in Switzerland. The way to obtain it would be
12 through the Hague Convention subpoena, but neither party wants
13 to go through that process --

14 THE COURT: Why?

15 MR. GRANTZ: -- because it is expensive and uncertain.
16 And so everyone seems to let Mr. Iglehart off the hook.

17 And then, to your last comment, this case should be
18 settled. There is absolutely no reason for this case to
19 continue. We've made a settlement proposal. Got no response.
20 We'd like to have an opportunity to go through either a
21 mediation or an alternative dispute solution, because this case
22 cries out for settlement. I mean, the parties each have a
23 portion of the jewelry in their possession. It just doesn't
24 make sense to spend all of this money litigating when we could
25 resolve it but we just don't seem to have a partner in that

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1 resolution.

2 MR. MARCUS: If I may, Judge? Dave Marcus for the
3 plaintiff.

4 I think a settlement proposal of withdrawal of the
5 lawsuit is not a settlement proposal.

6 Secondly, with regard to the divorce record, it is
7 simply not true. I spent -- we had three conference calls with
8 Ms. Kelly. We spent -- we initiated them and had spent an
9 enormous amount of time talking about it. She insisted on
10 getting the entire divorce record. She wanted the transcripts
11 and the exhibits. There are 6,000 or so pages of it. At the
12 conclusion, I think it was the third time that we spoke with
13 her, we pressed her and said, you appear to have all this stuff
14 because you have been citing it. And she said -- and she then
15 acknowledged, yes, we do, we have all of it. So after all of
16 that --

17 MR. GRANTZ: That is not true.

18 MR. MARCUS: That is. She said you have it. And I
19 confirmed that in a letter. I don't.

20 (Unintelligible)

21 THE COURT: Stop. Stop.

22 I've read your letters. There is not an admission by
23 defendants that they have everything from the divorce
24 proceeding. They acknowledge -- I don't recall the specifics,
25 but they have some of it.

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1 I agree with you, if they have it, they shouldn't be
2 asking you for it again.

3 Look, guys, if you are not prepared to spend the money
4 to prosecute your case, to learn everything that is learnable,
5 then the answer is you settle. That is rational. But you
6 can't not do what needs to be done and then somehow say, Judge,
7 you figure it out but we're not going to tell the Court all the
8 information that would be the basis for an accurate decision.
9 I don't -- I want to get it right, and it is your job to
10 present the actual evidence to me. And if you don't want to
11 spend the money on a Hague Convention subpoena, then somebody
12 is going to live with a determination that you haven't gotten
13 past the 50 percent point.

14 MR. MARCUS: With regard, Judge, to Iglehart, that --
15 it's not accurate when Mr. Grantz says that nobody tried to get
16 that. Mr. Iglehart was sued in Switzerland by Swiss lawyers
17 who went after his file. It was brought -- it was before the
18 equivalent of the Bar Association there. And his files -- and
19 they are well aware of this because I did explain this to Ms.
20 Kelly in great detail on the phone with her that his files were
21 ultimately, after extensive, I think, litigation -- I wasn't
22 involved in that. I was (unintelligible). It was a difficult
23 process. He produced his files to Swiss counsel, who produced
24 them to me. We reviewed them in their entirety and produced
25 anything relevant to defense counsel.

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1 There was --

2 THE COURT: Excuse me. You have more of his files
3 that --

4 MR. MARCUS: I have, it is just financial stuff. It
5 is bank records. It is other stuff. It has nothing to do
6 with -- but anything that was -- that had anything to do with
7 the jewelry were produced -- was produced. There were --

8 THE COURT: Hold on. Have you produced every single
9 paper from Mr. Iglehart's files about Topaze and the successor
10 entity? Every single paper? Yes or no?

11 MR. MARCUS: Every single -- yes. Yes. Definitely
12 yes.

13 There was only one piece -- I would have to go back
14 and confirm that, but I believe there was only one piece of
15 paper that had anything to do with Topaze in his file.
16 Everything else was just -- it was hundreds and hundreds of
17 pages of bank -- I think he was power of attorney for
18 Ms. Stewart, and so he was keeping bank deposits and what have
19 you. I have no problem producing the whole file but --

20 THE COURT: And how are you so sure?

21 MR. MARCUS: So sure?

22 THE COURT: If he had power of attorney for the
23 plaintiff, again, how does he go represent the defendant? But
24 that's OK; assume just another part of my suspicion here. But
25 when he is exercising this power of attorney, how are you so

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1 sure that he has nothing to do with the underlying facts of
2 this case?

3 MR. MARCUS: My recollection -- I don't have it in
4 front of me. My recollection is just simply bank records from
5 Swiss -- from Swiss -- most of it. I have no problem producing
6 the whole -- I'll produce the whole Iglehart file. I would
7 imagine I have no -- I have no qualms about that. It is just I
8 wasn't going to just do a document dump if there is nothing in
9 there.

10 I went through the entire file. I searched. I went
11 through it personally. And I produced -- there was the one
12 letter I believe that we did produce that was a letter from him
13 to Michele. That was the one with the eleven kisses, X's and
14 O's, that was produced. I believe it was a 2012, if I'm not
15 mistaken. But other than that, there was nothing -- there was
16 nothing on Topaze, there was nothing on DGBF, there was nothing
17 at all in his file that he produced to Swiss counsel that had
18 anything to do with any of the issues in this case. There was
19 simply a bank transaction and other stuff that he had -- he had
20 represented Barbara Stewart for many, many years and whatever
21 it was he had. Again, I don't have it in front of me, but it
22 was nothing that had any relevance that they would be
23 interested in going through, so I did not produce the whole
24 file.

25 But I did tell them that I did have that file. I

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1 imagine maybe they have the file as well. But I don't know
2 what they got from Mr. Iglehart. They got apparently other
3 information, other documents from Mr. Iglehart that we did not
4 have, that were not in the file that he produced to us.

5 MR. GRANTZ: This is Dave Grantz, Judge.

6 Whatever documents we got from Mr. Iglehart, we
7 produced. We have no other files. We have no other
8 information. The information that he is talking about now
9 related to a proceeding that came after the divorce, I guess
10 when Ms. Stewart was frustrated with the result of her divorce
11 and wanted to gather documentation and prosecute Mr. Iglehart
12 criminally for his conduct, and she also brought a proceeding
13 against Ms. Bouman in Switzerland criminally for her conduct as
14 related to the divorce. I don't know what happened in
15 Mr. Iglehart's proceeding. In Ms. Bouman's proceeding, the
16 case was dismissed and she was told to pursue Ms. Bouman
17 civilly.

18 We would like to see any documentation that Mr. Marcus
19 has obtained from Mr. Iglehart, and we'll make our own
20 determination as to whether or not something is or isn't
21 relevant or is pertinent to the matters of this case, and we
22 would appreciate that he does produce those things to us.

23 MS. KELLY: Your Honor, also -- this is Catherine
24 Kelly. If I may just briefly discuss the divorce issue, which
25 Mr. Marcus raised a couple of minutes ago?

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1 I am not sure the chronology laid out was accurate.
2 But what we are requesting, your Honor, are the deposition
3 transcripts, the pleadings, motions, and other documents filed
4 with the divorce court, and plaintiff's discovery responses.
5 Plaintiff has objected, saying that those documents are not
6 relevant and overly burdensome. But, I mean, as we've been
7 discussing, those documents are clearly relevant, because in
8 that proceeding the plaintiff repeatedly disclaimed any
9 interest in the jewelry and testified to this fact multiple
10 times under oath, claiming that she transferred all the jewelry
11 to Topaze and that Michele owned Topaze. Of course, we now --
12 we know that she is arguing the exact opposite here, and that's
13 why we want those documents.

14 We subpoenaed plaintiff's ex-husband for these same
15 documents, and he told us that he is willing to produce them to
16 us if plaintiff gives consent.

17 THE COURT: OK. That's the end of it. So long as the
18 two parties to the matrimonial agree that the matrimonial
19 record can be produced to third parties, they are available.
20 The law is otherwise that normally it is only the husband and
21 the wife, or the two, you know, who have access to the
22 testimonial proceeding. But if there is no objection on the
23 part of the husband, then we're just into a regular discovery
24 dispute.

25 MR. GRANTZ: Your Honor, this is Dave Grantz. Sorry

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1 to interrupt.

2 I agree with you completely on that point. The
3 problem is that we don't have consent from Ms. Stewart to get
4 those records from Mr. Stewart.

5 THE COURT: She doesn't --

6 MR. GRANTZ: She doesn't consent.

7 THE COURT: Wait a minute. She doesn't want to -- the
8 plaintiff is resisting producing them in this case, but that
9 isn't the same thing as getting permission from the husband.
10 If the husband gives you permission, gives the defendant a
11 letter that says I have no objection to the records of my
12 matrimonial proceeding with my former wife being produced in
13 the context of this litigation, what else do you need?

14 MR. GRANTZ: Well, he's given us that letter. She
15 won't produce the records, or she won't consent to have him
16 give them to us. She is the one holding us up, not him.

17 THE COURT: I got that.

18 MR. GRANTZ: So all we need to do is have her consent
19 and he'll give us all the records.

20 Are you ordering her to consent?

21 THE COURT: Mr. Marcus, why shouldn't, if there is no
22 burden and your position is they are irrelevant, so, you know,
23 produce or not, that doesn't make them relevant. If they are
24 not relevant, they will remain not relevant. So what possible
25 objection can you have? No burden on you because you don't

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1 have to be the one producing them. Relevance is ultimately
2 determined by me, not you. End of story.

3 MR. MARCUS: Right.

4 THE COURT: Right?

5 MR. MARCUS: I suppose I don't have any strong
6 objection. I was --

7 THE COURT: OK. Done.

8 MR. MARCUS: -- certainly (unintelligible) --

9 THE COURT: Done.

10 MR. MARCUS: Go ahead. You can get them from
11 Mr. Stewart.

12 THE COURT: OK.

13 MR. MARCUS: You could say I don't object.

14 Now, my understanding is you have the record --

15 THE COURT: I don't care anymore. Let them have it.
16 They can get it direct from Mr. Stewart. Excellent.

17 MR. MARCUS: OK.

18 THE COURT: All right. So we've now covered the Tres
19 subpoena. We've covered the attorney-client privilege issue,
20 which I would expect some submissions on from the defendant,
21 and, of course, plaintiff can respond. I think that we have
22 some issues about search terms.

23 And I guess the answer, Mr. Marcus, since you brought
24 the case, is you want to make a submission about the cost and
25 burden of doing the search that the defendants want you to do.

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1 You really need to do that with, you know, real expert
2 testimony. You need to have one of these companies say for us
3 to work through this amount of records, it will cost the
4 plaintiff, you know, five dollars. Since you can't just say
5 it, you just can't say it. That is not sufficient.

6 MR. MARCUS: Well, our main point -- this is Dave
7 Marcus speaking for the plaintiff. Our main point, Judge, is
8 it doesn't go to any of these other issues, and it is just
9 burdensome, it is irrelevant, to have us go through every email
10 that Barbara sent to any one of her children --

11 THE COURT: How about sent emails talking about your
12 jewelry? I mean, give me a break. Seriously?

13 MR. MARCUS: It is not just jewelry, but if you look
14 at the list of words that they have in there, it's an enormous
15 list. It would pop up -- it would pop up many, many, many
16 emails, and it is just -- it is not going to -- you know. I
17 mean, I could tell you I spent about two weeks going through
18 documents. We have many, many documents in this case,
19 documents I spent an enormous amount of time and enormous
20 detailed effort to go through and pull up everything that we
21 thought was relevant in this case to the issues that dealt with
22 any of the issues in this case. And we had conferenced with
23 defense counsel prior to discovery, and we talked about search
24 terms. And we agreed to, you know, let's make our demands and
25 then we'll respond accordingly and that we didn't need to sit

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1 and identify specific search terms from the getgo. We had that
2 initial conference.

3 And then now they come back and say, well, you didn't
4 produce enough documents and, therefore, go back and do the
5 whole thing again and find me documents that are related to our
6 counterclaim, if you have any. If she has a piece of jewelry
7 that maybe she gave to, you know, somebody, or whatever, I
8 don't know what relevance -- it has nothing to do with Topaze
9 or anything like that because we've done those searches. So
10 we've definitely produced every document, I could tell you,
11 with an enormous amount of effort. This is not us looking
12 to -- you know, I -- I don't agree with their assessment that,
13 you know, we're sitting here and we just don't want to do the
14 work. We have done the work, and it was an enormous amount of
15 work to go through all these documents, and they were produced.

16 THE COURT: How could you do this without agreeing on
17 search terms in the first place?

18 MR. MARCUS: Well, actually --

19 THE COURT: I'm going by my client's file, isn't that
20 the way it's done these days? Not when I was a practicing
21 lawyer, because we didn't have search terms back then.

22 MR. MARCUS: Right.

23 THE COURT: Right? But now that's what lawyers do.

24 MR. GRANTZ: Your Honor, this is Dave Grantz.

25 It is fairly uncomplicated. She has a phone. She has

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1 a computer. She has email. You upload that stuff to an
2 e-discovery company. You provide them with the search terms.
3 They put it on the relativity platform, and then they do the
4 searches. They tell you how many hits there are, and they tell
5 you how many search terms hit. And then they say you have
6 60,000 hits and you have, you know, 20,000 pages of
7 deduplication and we're going to eliminate the deduplication.
8 Now you have 40,000 pages. Then you narrow the search terms
9 down to the more relevant search terms, and then you produce
10 them to the other side. And they put them on their relativity
11 platform, and they look at those documents in the way that we
12 look at documents today. And we make the determinations as to
13 whether or not relevancy is an issue. He doesn't get to make
14 that determination. It is a broad standard for discovery, and
15 that's why e-discovery is so expensive and complicated, because
16 we have to have other companies come in and do the searches for
17 us. But they don't want to give up her phone or her computer
18 to a company, and they don't want to expend the money with the
19 company to do the work that needs to be done. But we want to
20 see that material, and we're not walking away from it. We
21 certainly didn't waive our right to it by not agreeing to
22 specific terms. We reserved our rights in connection with
23 this, and when they didn't produce anything of significance or,
24 you know, that was meaningful, we knew that they were either
25 not searching or they were withholding.

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1 MS. KELLY: Your Honor --

2 MR. MARCUS: Dave Marcus here.

3 MS. KELLY: I'm sorry. Just as a follow up to what
4 Mr. Grantz was saying. For example, plaintiff did not produce
5 any documents at all with her son, Tres, who was involved in
6 these issues. He was the one that was involved, if the Court
7 remembers, in 2012 with retrieving earrings, ruby earrings,
8 that Topaze owned. He retrieved them from Michele in
9 Switzerland, because Ms. Stewart was threatening that if
10 Michele did not turn those over for her to pay her counsel
11 fees, that Ms. Stewart was going to take her house away from
12 her. Tres was the one and had multiple communications with
13 Michele regarding the retrieval of those earrings.

14 Tres has also submitted an affidavit in connection
15 with this matter in opposition to our motion to dismiss. We
16 expect that there are multiple communications not only with Ms.
17 Stewart and Tres regarding that issue but also between Tres and
18 plaintiff counsel. Those documents are not produced. Barbara
19 also did not produce any communications with her husband.
20 There was only one, rather, communication with her husband.
21 That's just unbelievable considering that they created this
22 entity together 28 years ago and Mr. Stewart repeatedly
23 purchased pieces that were transferred to Topaze. So these are
24 the types of documents that we're looking for. They are
25 directly related to not only plaintiff's claims but also ours.

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1 And our -- the search terms that we proposed are
2 directly -- you know, would directly hit these documents.

3 MR. MARCUS: Dave Marcus. If I could respond?

4 We had this conversation and I asked Ms. Kelly how
5 they obtained documents from Ms. Bouman, and the response was
6 that she went through her own emails and decided what was
7 relevant and not. So this was not a situation where they went
8 to a service and looked through these, either. And they're the
9 ones that are saying that she took ownership. I don't want to
10 repeat myself on this. It seems to me Barbara Stewart was
11 asking repeatedly during this marital case: Do you have any
12 documents? I don't have anything. Give them to me.

13 And so it is clear that she was not involved in any of
14 this either from a (unintelligible), or down the line in terms
15 of Topaze or DGBF, she didn't know what was going on. She
16 never signed any documents. All of them would be with either
17 Iglehart or Michele Bouman.

18 And what was produced -- apparently, Ms. Bouman didn't
19 haven't any. But there was no effort -- and correct me if I'm
20 wrong, Ms. Kelly -- you told me, to my recollection, that she
21 just went through her own emails and produced what she felt was
22 relevant. She culled out what she thought was relevant. So
23 we -- you know, there was some understanding here that that was
24 the way it was done, and perhaps -- perhaps you would have to
25 do the same thing. You know, if we are going to do this and

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1 really get into detail on it, then both parties should be
2 subject to the same rules.

3 MS. KELLY: Your Honor, it is correct that Ms. Bouman
4 conducted the search of her own emails. We produced the
5 exhaustive search of search terms that she used. There is no
6 assertion by plaintiff that there is any problem with the
7 production that Ms. Bouman provided. There are other papers
8 that are submitted to the Court and on which we are
9 conferencing right now relate to the -- you know, as far as
10 plaintiff is concerned, our production is sufficient.

11 The problem here is the search terms and the way in
12 which Ms. Stewart conducted her search. And like I said
13 before, we provided our search terms. They refused to do other
14 similar search. And when I was meeting and conferring with
15 Mr. Marcus, he admitted to me that they could probably do some
16 additional search terms, but then he refused to get into which
17 ones they did and which ones they would be willing to do, so
18 therein lies the problem and why we --

19 MR. MARCUS: Dave Marcus responding.

20 That's is not true, Ms. Kelly, and we talked about
21 this. And I said -- I admonish you not to say that, because we
22 had this conversation and you repeatedly made this comment. I
23 told you what search terms we used. We did Topaze both ways,
24 both spellings. We did DGBF. We looked through every document
25 that had anything to do with an email either from Iglehart or

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1 Michele Bouman, and we looked at the jewelry. Those are the
2 ones we looked at. And that would have gotten anything, if
3 there was an email with Tres or with Lisa Stewart or one of the
4 children, it should have pulled that up, and anything that
5 would have been relevant to this case it would have pulled up.
6 We ran those searches and we did it with great detail, and I
7 spent an enormous amount of time going through the enormous
8 number of documents that I had in my file and, you know,
9 whatever I had on the marital case, etc., etc. And I think for
10 me to rerun searches where I just run Jeffrey Stewart, every
11 email for Jeffrey Stewart (unintelligible) is not going to come
12 up with anything else. It's not going to deal with the jewelry
13 or Topaze or Tres Stewart. It is not going to deal with any of
14 those.

15 MS. KELLY: That's not what we asked for.

16 MR. MARCUS: We have what we have.

17 MS. KELLY: That's not what we asked for. You know,
18 we asked for the search terms. The Court has Exhibit D to
19 our --

20 THE COURT: Excuse me. Excuse me.

21 Mr. Marcus.

22 MR. MARCUS: Yes.

23 THE COURT: Did you personally run these -- whatever
24 search terms you used, did you personally run those because you
25 have somehow in your office the plaintiff's email collection?

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1 MR. MARCUS: I don't have her entire email collection,
2 but I have hundreds of thousands of pages of documents from
3 prior hearings, what have you, and from Barbara Stewart,
4 because I represented her for ten years. I personally ran
5 those searches on all -- and we have -- I have tried to
6 accumulate them. And I don't have their entire database of
7 emails. I don't know that I am required to do that on her
8 emails. That's the one thing that I have some -- I had some
9 emails from her. I had some years ago, I had -- I had copied a
10 number of files from her. But other than that, I asked her to
11 run it on her -- and I couldn't tell you when that email that
12 she has currently -- it is a Gmail account. I couldn't tell
13 you when that started, but I asked her to run those -- those
14 other searches independently. I personally ran the searches
15 from my end on everything that I had on my computer and every
16 document that we have in our files are computerized, and so,
17 you know --

18 THE COURT: Let me interrupt you.

19 Mr. Marcus, does this mean that there has not been a
20 comprehensive search of the plaintiff's emails and her
21 computer? Is that what it means?

22 MR. MARCUS: I wouldn't say that. I would say there
23 was a comprehensive search for those search terms that I just
24 described -- Topaze with an "e," Topaze without an "e," "EGBF,"
25 "Michele" as in Michele Bouman, "Iglehart," and "jewelry,"

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1 those, which I would, I feel, are comprehensive. I don't know
2 what else there could be that would generate anything relevant
3 to the issues that we're talking about in this case. Those are
4 the search terms that I thought were -- but they want me to run
5 search terms of "rock" and, I don't know, some other -- "ring,"
6 "rock," "Jeffrey Stewart." There are a number of names in
7 there of people, some I don't even know who they are. And I
8 don't know what they would have to do with this.

9 THE COURT: OK. If the defendants committed their own
10 client to run the search of terms, then it's certainly
11 acceptable for the plaintiff to let the client run the search
12 terms. So, why don't we have Mrs. Stewart run some additional
13 search terms. If you guys can't agree on exactly which ones --
14 which additional terms Ms. Stewart ought to run searches on,
15 you can submit your agreements and disagreements to me and I'll
16 figure it out. How is that?

17 MS. KELLY: Sounds good, Judge. Thank you.

18 MR. GRANTZ: This is Dave Grantz.

19 It seems that that is the only resolution here,
20 because we don't believe that Ms. Stewart ran searches and we
21 don't believe that she is capable of running the searches. And
22 we also don't believe that the production, you know, provides
23 the documents that exist, because we know from other
24 documentation that there were text messages and there were
25 emails and there were discussions between Tres and her about

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1 the jewelry, and they just didn't produce any of them. So we
2 know for a fact that there is documentation out there that
3 hasn't been searched or produced. So if we can't agree, we are
4 certainly OK with your Honor making the call.

5 As for her doing the searches herself, look, everybody
6 is entitled to do that. There is no requirement under the
7 rules that you hire a service to conduct a search. The
8 requirement is that you do a complete search and produce all of
9 the responsive documentation, which hasn't been done here. So
10 if we can't agree on it, then your Honor has to make a call and
11 issue an order; I agree with that.

12 THE COURT: OK. I think we've covered everything.

13 MS. KELLY: Your Honor, there are a couple of
14 additional smaller issues that we --

15 THE COURT: You are pushing it.

16 MS. KELLY: I apologize, your Honor.

17 THE COURT: You know, it is now one hour and about 15
18 minutes.

19 MR. GRANTZ: We appreciate your Honor's patience with
20 us. This is Dave Grantz. We are all dealing with
21 circumstances, and we appreciate your helping on this call with
22 us and conducting this hearing via the phone. Hopefully, if we
23 have to do this again, we will do it in person.

24 But Ms. Kelly is correct, there are a few other issues
25 that we should bring to your Honor's attention and get them

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1 clarified so we can go forward.

2 THE COURT: Go ahead, quickly.

3 MS. KELLY: Your Honor, we would like plaintiffs to
4 use our definition of "jewelry" that we use in our request. We
5 use the definition, to quote it, "Any item of jewelry owned at
6 any time by plaintiff or Topaze/DGBF." We use that definition
7 because, of course, this action relates to the jewelry that
8 Topaze and DGBF owned, therefore those two should be included.

9 THE COURT: So what is the dispute about that?

10 MS. KELLY: The dispute is that plaintiff doesn't
11 believe that it should include -- the definition should include
12 any piece that the plaintiff has ever owned in her life. The
13 reason, however, we included that --

14 THE COURT: No. No.

15 MS. KELLY: -- plaintiff's jewelry, any jewelry she
16 owned in the definition, is because she has admitted under oath
17 multiple times that the whole purpose of establishing Topaze
18 was so that it would own all of her jewelry. So I think this
19 is part of the issue, this plaintiff's production of documents,
20 is that they were picking and choosing. Although they claim
21 that they did search for "jewelry," they may have been picking
22 and choosing which documents to include in the production,
23 because they were not -- they didn't accept our definition of
24 jewelry.

25 THE COURT: The plaintiff's substantive position here

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1 is that for tax reasons she placed the jewelry into Topaze.
2 Obviously her position is that during her lifetime she got to
3 enjoy it and that after her life ended, that her granddaughters
4 were going to own it. Her position is the defendant never
5 owned it. But what -- I get that. Defendants want to say that
6 somehow she became the owner of the plaintiff's jewelry. But I
7 don't understand, given the plaintiff's position, why she would
8 fight with you about that definition.

9 MR. GRANTZ: We don't understand it either. This is
10 Dave Grantz speaking. So that is one of the --

11 THE COURT: What is wrong with their definition, given
12 your theory of the case?

13 MR. MARCUS: Our position was that the issue should be
14 narrowed. I thought the counterclaim was baseless and should
15 be dismissed and it would narrow the discovery. For us to go
16 through in detail to do a detailed search for all documents on
17 any piece of jewelry that she ever owned at any point in time
18 in her life and, you know, I don't -- you know, it just
19 expands --

20 THE COURT: Well, wait a second.

21 MR. MARCUS: And it is not relevant.

22 THE COURT: Wait a second. If your position is that
23 some necklace belongs to your client and, lo and behold, the
24 defendant is in possession of that necklace now, isn't your
25 position that it isn't the defendant's?

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1 MR. MARCUS: Right.

2 THE COURT: Why would you not -- look, I'm not
3 interested -- although, you know, maybe when you do it once,
4 you should just do the whole damn thing -- I'm not interested
5 in the damages question of what is the jewelry that plaintiff
6 has in her possession worth versus what is the value of the
7 jewelry that defendant has in her possession worth. That is a
8 damages question, but --

9 MR. MARCUS: That's where they are going.

10 THE COURT: Well, that may be. But you still are --
11 your position has to still be all of these pieces of jewelry
12 are mine and let me list them for you. I own whatever it is,
13 40 pieces of jewelry. Why would you not list everything that
14 you own? And maybe, just maybe -- just a second -- maybe
15 knowing what the value of the jewelry in plaintiff's possession
16 is versus the value of the jewelry in defendant's possession
17 would be helpful when you try someday, God willing, to settle
18 this case.

19 MR. GRANTZ: Your Honor, this is Dave Grantz, and that
20 brings up one other question. The issue that we raised --

21 MR. MARCUS: (unintelligible)

22 THE COURT: Only one of you can talk.

23 MR. GRANTZ: This is Dave Grantz.

24 The other -- that issue is a pertinent issue as well.
25 Ms. Kelly was probably going to get to it. But we asked for

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1 all of the jewelry that is in Ms. Stewart's possession, custody
2 and control right now to be produced to our appraiser today.
3 Obviously, the COVID-19 --

4 THE COURT: I don't care about that.

5 MR. GRANTZ: -- put a crimp in that, and,
6 unfortunately, we couldn't have that inspection done today.
7 But we are going to need that inspection to be completed at
8 some point so that we can see what jewelry she has and we can
9 determine what the value is because that may impact damages in
10 this case.

11 THE COURT: OK. I don't care about that right now.
12 Unless we get to some point where there is some greater
13 commitment to settlement, damages are separate. They have
14 nothing to do with the history of Topaze and who was supposed
15 to have ownership of this jewelry and who is eventually
16 supposed to have ownership of it, and who was to enjoy it
17 during Ms. Stewart's lifetime. OK? I don't care what the
18 value of it is until you really want to talk settlement.

19 MS. KELLY: Your Honor --

20 MR. MARCUS: This is Dave Marcus. If I can respond?
21 The Judge asked a question of me before. I can respond. Dave
22 Marcus.

23 With regard to the question of the list of jewelry, we
24 have suggested that we would do that if we could get a
25 correspondence, and I think -- and it has been done. And Ms.

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1 Kelly has prepared a list of what Ms. Bouman is in possession
2 of, and we have been in agreement that we would be happy to
3 produce a list of what Ms. Stewart had in her possession. It
4 occurred to me that would be sufficient for, instead of going
5 and doing broad-based searches about each piece of jewelry
6 and -- you know, which could have nothing to do with any of the
7 issues in the case, we're happy to produce a list of what we
8 have in our possession, and maybe that would hopefully cut to
9 the chase and save everybody a lot of time, needless time.

10 THE COURT: I don't think that what the defendants are
11 looking for is primarily a valuation question, though I think
12 it has obvious benefits. What they're looking for in her
13 correspondence, they hope to find some kind of admission that
14 helps the defendant's position here on the merits. And that,
15 apparently, is what has not been looked for. And the potential
16 of emails between Ms. Stewart and her children, her husband,
17 might be useful. I'm not sure why that wasn't fully explored
18 during the matrimonial, but I guess it wasn't.

19 MR. MARCUS: Dave Marcus here.

20 I think it was. I think that's what they have. I
21 mean all the --

22 THE COURT: Then when? Then now that you will finally
23 stop resisting the disclosure of the records in the
24 matrimonial, then maybe some of that will be covered there and
25 make some of these issues clearer now. But I don't really

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1 see -- look, I have resolved the issue of search terms. I
2 don't want to go back to it. All right?

3 What else is left, Ms. Kelly?

4 MS. KELLY: Your Honor, two additional issues, and
5 then we would just request the Court extend the time to conduct
6 those three depositions that we requested and also for our
7 demand of inspection.

8 But as far as the discovery issue is concerned, the
9 two issues are defendant is objecting to produce any documents
10 that she will identify or use as evidence at any hearing or
11 trial in this action. She is claiming that that request is
12 vague and ambiguous and overbroad --

13 THE COURT: I agree. You can't ask that question.
14 That is not a good question. No one knows what's going to be
15 used at trial. As for documents, you don't ask for a
16 disclosure now of your trial exhibits.

17 MS. KELLY: OK. All we're asking, your Honor, is to
18 the extent plaintiff knows that there are particular documents
19 that she intends to use at trial --

20 THE COURT: No. Stop.

21 MS. KELLY: OK. Thank you, your Honor.

22 And the final discovery-related issue is related to
23 her affirmative defenses. She refuses to produce any documents
24 relating or that could be factual support for her affirmative
25 defenses. We believe that that's a proper subject of

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1 discovery, however.

2 THE COURT: I don't know what her affirmative defenses
3 are. I don't know whether that actually makes any sense. Most
4 lawyers put in, you know, a vast array of affirmative defenses
5 that are absolutely meaningless, and I don't know that you
6 really at this point really need that clarification. I really
7 don't.

8 MS. KELLY: Thank you.

9 THE COURT: You are torturing each other sufficiently
10 otherwise I think.

11 MS. KELLY: Thank you. Thanks a lot.

12 THE COURT: I don't care -- of course you can have an
13 adjournment, and it is kind of hard, you know, to know exactly
14 what makes sense, but maybe you guys can have a conversation
15 with regard to that. It is really difficult, I appreciate it.

16 MR. GRANTZ: This is Dave Grantz here. I appreciate
17 that, your Honor. Mr. Marcus and Ms. Kelly and I will meet and
18 confer, and we will put together a new scheduling order to
19 reflect the issues with COVID-19 and the other issues that
20 relate to the case, because even if we had hoped to get some of
21 this discovery completed in the next few months with these
22 depositions, that's going to be virtually impossible now. We
23 don't even have courts open in New York. We are not meeting
24 face-to-face. And I would prefer not to take Ms. Stewart's
25 deposition by phone or by computer.

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1 THE COURT: OK. Well, also, Ms. Stewart shouldn't be
2 seeing anybody.

3 MR. GRANTZ: Right. She is elderly, and we are
4 cognizant that we don't want anyone to get infected with the
5 virus. We want to adhere to the respective governors' orders
6 in our states.

7 THE COURT: Right. Of course. But, also, let's also
8 remember that maybe this COVID situation will maybe put a
9 little perspective into the case as a whole.

10 MR. GRANTZ: Thank you, your Honor.

11 THE COURT: And the lifetime of fighting, which is
12 just, you know, to me so antithetical to everything, you know,
13 I am as a human being. So, you know, all I would say is when
14 you submit anything going forward, like a new schedule, put it
15 in the form of an order, which makes it something that's easier
16 for me to just sign, you know, like on the so-ordered line.

17 MR. GRANTZ: Of course.

18 THE COURT: Because it is more complicated doing this
19 all, you know, remotely. And just, you know, I don't want to
20 start imposing any particular deadlines as to when the
21 attorney-client privilege briefing ought to come in, because,
22 honestly, I don't know what your personal situations are, and I
23 recognize the total uncertainty of where we are even going to
24 be three months from now. So, if you could talk to each other
25 and work out a comprehensive schedule, I would find that very

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1 useful.

2 MR. GRANTZ: We will do that, your Honor.

3 THE COURT: Put it in a -- you know, make it as easy
4 as possible for me to sign my name.

5 MR. GRANTZ: Your Honor, is it possible for there to
6 be an order for alternative dispute resolution? Maybe that can
7 bring us to a resolution of this case. I don't know that we
8 can do that --

9 THE COURT: Yeah. I think that a mediation may be
10 somewhat functional on a remote basis. I guess my sort of
11 issue with that would be that I know how complicated this is
12 that I think it would be just awfully hard to try to do, you
13 know, a settlement conference remotely without everybody there.
14 To me, it would be very challenging.

15 MR. GRANTZ: I just want to raise it so that maybe we
16 can get through some of this discovery and then revisit it.

17 THE COURT: Sure. It is a clear problem. You know,
18 there may be some availability. You know, I just don't know
19 how you do a kind of settlement where you can't ask someone to
20 sort of leave the room, you know, sort of --

21 MR. GRANTZ: I completely agree.

22 MS. KELLY: Your Honor, actually, I was on the phone
23 with some other attorneys yesterday who had just come out of a
24 mediation, and the way that the mediator conducted it was to
25 call the one party with the attorney on the line, discuss it

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1 with them, and then hang up, and then call the other attorney
2 with their party, and at some point the mediator asked for the
3 party to get off the line so that the mediator could just speak
4 with the attorney. And the lawyer reported that the case
5 wasn't settled but it wasn't because of the issues with
6 navigating the phone lines. I've participated in mediation
7 before the Southern District magistrates before. It is very
8 great -- you know, it is very great, so that's what we would be
9 interested in doing, if your Honor --

10 THE COURT: Do you recall, I can look it up, but who
11 your magistrate judge is in this case?

12 MS. KELLY: Judge -- oh, in this case?

13 MR. GRANTZ: I don't think we have one, Judge. I
14 think you are on your own.

15 THE COURT: No, I'm never on my own.

16 MR. GRANTZ: Usually they --

17 THE COURT: No. Hold on a second. I can pull this up
18 on my --

19 MR. GRANTZ: This is Dave Grantz. I'm surprised that
20 we have a magistrate judge. I would have thought that the
21 magistrate judge would have dealt with all of these discovery
22 issues.

23 THE COURT: No. I was a magistrate judge for 19
24 years. I have learned as a district judge that there are fewer
25 disputes if you have to talk to me. OK? I find that, you

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1 know, lawyers feel a little bit more constrained.

2 MS. KELLY: Your Honor, I believe it is Magistrate
3 Judge -- your Honor, I believe Magistrate Judge Cott has been
4 designated.

5 THE COURT: OK. Well, you know, I don't know -- you
6 know, if you want to revisit it at some point, then I will
7 certainly, you know, ask him what his capacity from home is,
8 you know, to engage in settlement discussions with you.

9 MR. GRANTZ: I appreciate that, Judge.

10 THE COURT: Just let me know when it is truly ripe.

11 MR. GRANTZ: We'll meet and confer and get back to
12 you.

13 THE COURT: OK. All right. Sounds good.

14 MR. GRANTZ: Thank you.

15 THE COURT: OK.

16 MR. GRANTZ: Thanks for giving us the time today.

17 THE COURT: OK.

18 MS. KELLY: Your Honor, thank you so much for all your
19 help. I hope that you remain healthy.

20 THE COURT: I am going to try. You, too.

21 MS. KELLY: Thanks.

22 THE COURT: Very good. Goodbye.

23 (Adjourned)
24
25